IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 268 of 1998.

Pune District Central
Co-operative Bank. Ltd. ... Applicant.

Vs.

Balasaheb Pandurang Khutwad
and another. ... Respondents.

Shri Vijay Patil for the Applicant.

Ms.Revati Mohite Dere for respondent No.1.

K.V.Saste, A.P.P. for respondent No.2-State.

CORAM: V.C. DAGA,J.

DATED: 3rd July 2007.

P.C. :

. Heard learned counsel for the applicant, learned counsel for respondent No.1 and learned A.P.P., for the State. Perused revision application.

2. This revision is at the instance of the Pune District Central Co-operative Bank Ltd. Pune ("Bank" for short), a Society registered under the Maharashtra Co-operative Societies Act, against the order dated 1st July, 1998 passed in Regular Criminal Case No.10146/1978 (original R.C.C. No.410/1976) by the Additional Chief Judicial Magistrate, Pune,

whereby the accused came to be acquitted of the offences charged under Sections 408, 409,464, 467, 471 of I.P.C.

3. According to the applicant-bank, during the course of audit, for the period from 20th March, 1973 to 6th January, 1996, all the accused in collusion with each other made various false entries in the registers maintained by the Bank and withdrew Rs.61,451.60 from the account holders' accounts and misappropriated the said amount. On the complaint of the applicant- Bank the police carried out investigation and chargesheeted the accused in the Court of Judicial Magistrate, First Class, Bhor. Thereafter the matter was transferred to the Court of Chief Judicial Magistrate, Pune. As per the report and submission of learned A.P.P. Mr.Joshi dated 18th August, 1982, learned Magistrate discharge accused No.2 - Shantaram Rangnath Mate under section 239 of Criminal Procedure Code. Charges were framed against accused Nos.1, 3 and 4. The accused pleaded not guilty. Again on the report submitted by A.P.P. on 12th August, 1985, learned Magistrate amended the charges as per Exh.110 and the charges levelled against accused Nos.1 to 3 were restricted to criminal breach of trust of Rs.25,826.40.

4. During the course of hearing, the prosecution has examined 9 witnesses, out of which two main witnesses i.e. the Enquiry Officer and the Assistant Manager (Accounts) of the Bank along with account holders, fingerprint expert and handwriting expert.

5. After appreciation of evidence, the trial Magistrate was of the view that in the case of fraud committed by the Cashier there would have been speaking entries in the cash book. That difference would have certainly been supported by the counter-slip of credit memo and the corresponding entry in the other account book as well as in the pass-book of the account holder. The defalcation would have been disclosed by difference in cash balance and the entries in the account books. That the audit is not made by the authorised Government Auditor of the Co-operative Banks but the Deputy Manager of the Bank has inspected the record. He has not seriously stated anything against accused No.3. The name of accused No.3 is neither mentioned in the F.I.R. nor in the report submitted to the Board of Directors. Even P.W.1 has also stated that the disputed hand writing is of accused No.4 and not of

accused No.3. Therefore, considering the evidence, the Magistrate acquitted accused No.3.

6. The accused No.1 was the Branch Manager/ Accountant. He was shouldering greater responsibility of the branch. He has, however, admitted his guilt. So far as accused No.4 is concerned, the Magistrate has found that the disputed hand writing in the ledger book as well as in the pass books is of accused No.4. It was further held that the submissions made in written by accused No.1 in his application as well as in his statement were deliberately made with a purpose of saving accused No.4 from punishment. As such accused No.1 and accused No.4 came to be convicted for the offence of criminal breach of trust.

7. The Magistrate has appreciated the evidence in detail. He has given detailed reasons in support of his findings. The view taken by the Trial Court is a reasonable and possible view. No fault in the appreciation of evidence could be demonstrated by the learned counsel for the applicant.

8. This Court not being a Court of appeal cannot substitute its view in exercise of revisional

jurisdiction. Revisional jurisdiction is not only limited in scope but also is discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice as held by Apex Court in the case of **State of Rajasthan v. Gurucharandas Chaddha, AIR 1979 SC 1895.**

9. In the above view of the matter, no case is made out to interfere with the impugned order. In the result, the revision application has no merit. Same is accordingly dismissed with no order as to costs.

(V.C. DAGA,J.)